

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:19-cv-00244

James Stamps,
Plaintiff,

v.

Maxey Cerliano et al.,
Defendants.

Before BARKER, *District Judge*

ORDER

Pursuant to 28 U.S.C. § 636, United States Magistrate Judge K. Nicole Mitchell recommended that the court dismiss without prejudice all claims by plaintiff, who is a prisoner, against the two defendants who have been served with process: Gregg County Sheriff Maxey Cerliano and Jail Chief Jeff Callaway. Doc. 7. Plaintiff alleges that Cerliano and Callaway failed to help instigate, and then misled plaintiff about failing to help instigate, criminal proceedings against Corporal Williams of Gregg County, who allegedly assaulted plaintiff.

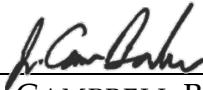
The magistrate judge recommended dismissal of all claims against Cerliano and Callaway under 28 U.S.C. § 1915A. Stamps objected to the recommendation. Doc. 9. The court has reviewed the magistrate judge's recommendation de novo and approves the magistrate judge's reasoning.

Plaintiff's first objection to the magistrate judge's report argues that Cerliano and Callaway are liable because they were Williams' immediate supervisors. But, under § 1983, supervisors are not vicariously liable for constitutional violations allegedly committed by their subordinates. *Shaw v. Villanueva*, 918 F.3d 414, 417 (5th Cir. 2019). Second, Stamps argues that, in this action, Cerliano and Callaway supposedly "represent[] Gregg County," so "the only way and reason

[they] should be dismissed is if Gregg County as a governmental body is to take full responsibility of my claims.” *Id.* That argument fails. Even assuming that Gregg County were named as a defendant, which it is not, it is a separate entity from Cerliano and Callaway. Moreover, a local governmental body such as a county is liable under § 1983 only if conduct violating a plaintiff’s rights (1) implemented or executed a policy statement, ordinance, regulation, or decision adopted and promulgated by that body’s officers, or (2) was visited pursuant to governmental custom. *Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690-91 (1978). Stamps alleges neither here.

The magistrate judge’s report and recommendation is **adopted**. The court **dismisses without prejudice** all claims against defendants Cerliano and Callaway, who are dismissed as parties to this action. This order does not affect plaintiff’s claims against Corporal Williams.

So ordered by the court on November 6, 2019.



J. CAMPBELL BARKER
United States District Judge